

in the number of Nasdaq-listed securities, there were 4,965 Nasdaq listings at year-end 1989 compared with 5,731 in October, 1994; this represents an increase of 15.5%. Real-trade reporting for OTC equities was initiated in December, 1993 with a total of 3,652 issues in the OTCBB at year-end. By October, 1994, this figure increased to 5,168 issues, which represents an increase of 41.5%.³ Thus, at the present time, NASD members routinely use the Service to report and compare trades in nearly 11,000 securities. The foregoing information was factored into the calculation of the revised ACT fees.

Additionally, the proposal is designed to recoup certain network costs attributable to provisions of ACT through the Enterprise Wide Network ("EWN").⁴ The EWN is the communications component of Nasdaq's system upgrade which will deliver the second generation of Nasdaq Workstation service functionality ("NWII") to market participants. NWII is currently being phased-in. While the NWII phase-in proceeds, ACT functionality must be provided via the EWN as well as the older network. Therefore, a portion of the fee increase will recoup the network costs associated with providing ACT to member firms using the NWII service.⁵

The NASD believe that the proposed rule change is consistent with the requirements of Section 15A(b)(5) of the Act. Section 15A(b)(5) specifies that the rules of a national securities association shall provide for the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using any facility or system that the association operates or controls. In this instance, the increased fees being proposed relate to a package of automation services available only to NASD member firms that qualify as

³ Additionally, ACT processes trade reports and effects trade comparisons on approximately 1,000 OTC equities that are not quoted in the OTCBB. This subset of OTC equities is characterized by moderate trade volume and the regular submission of trade reports by member firms.

⁴ The EWN will increase the capacity of the communications network supporting Nasdaq more than fivefold (9,600 baud to 56,000 baud). The software driving NWII is windows-based and will contain a number of data management features that are not available in the original Nasdaq Workstation service that resides in the 9600 baud network.

⁵ Section (a)(2) of the Rules of Practice and Procedure for the Automated Confirmation Transaction Service defines an ACT participant to be a member firm registered with the NASD in a market making capacity, or a member firm that functions as an order entry firm, a clearing broker-dealer, correspondent executing broker-dealer, or introducing broker-dealer. Because ACT participation is defined in this manner, ACT fees are only assessed against those member firms that actually use the Service.

ACT participants. The proposed fee increase is the first such increase since ACT became operational in 1989 and is necessary to offset the network costs associated with delivering ACT to approximately 1300 member firms.⁶ As noted above, the increased network costs which this proposal is designed to recoup have occurred as a result of the NASD's expanded trade reporting requirements, the growth in trade volume experienced by the Nasdaq and OTCBB market segments in recent years, and the roll-out of the NWII. In light of these factors, the NASD and NSMI submit that the proposed increase in ACT fees is necessary and appropriate to achieve an equitable allocation of reasonable fees among NASD members using the Service.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4 because the proposal constitutes a change in a due, fee, or other charge for a package of automated services provided only to NASD member firms. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

⁶ During the second half of 1995, ACT fees and ACT-related network costs will be reviewed to determine if the 1995 increase was sufficient to recover those costs. That review may reveal that a further increase is necessary.

Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above (SR-NASD-94-73) and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-35167; File No. SR-NASD-94-75]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Modification of Filing Fees Under Sections 43(e) and 44(e) of the NASD's Code of Arbitration Procedure

December 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 13, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under Section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁷ 17 CFR 200.30-3(a)(12).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Sections 43(e) and 44(e) of the Code of Arbitration Procedure ("Code") to modify the non-refundable filing fee for industry parties when submitting claims, disputes or controversies which do not involve, disclose or specify monetary relief.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Code presently provides in Section 43(a) that an industry claimant whose dispute, claim or controversy involves, discloses or specifies a money claim, regardless of the amount, must submit a non-refundable claim filing fee of \$500. However, the Code also provides in Sections 43(e) and 44(e) that any party, including public customers and industry parties, whose dispute, claim or controversy does not involve, disclose or specify monetary damages shall submit a non-refundable filing fee of only \$250.

The NASD has determined that there have been situations in which industry parties have purposely not disclosed the monetary amount of their claim in order to reduce the non-refundable fee from \$500 to \$250. Therefore, the NASD is proposing to amend Sections 43(e) and 44(e) of the Code to require that a uniform, non-refundable \$500 filing fee be assessed against all industry parties, regardless of whether the dispute, claim or controversy involves, discloses or specifies a money claim. However, Section 43(e) will retain the current claim-filing fee of \$250 for public customers whose dispute, claim or controversy does not involve, disclose, or specify a money-claim.

The NASD believes that the proposed rule change is consistent with the

provisions of Section 15A(b)(5)¹ of the Act, which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges among members, and the provisions of Section 15A(b)(6) of the Act, which require that the rules of the Association be designed to prevent fraudulent and manipulative acts, promote just and equitable principles of trade, and protect investors and the public interest, in that the proposed rule clarifies that the correct filing fee for industry parties in an arbitration case, regardless of whether an amount of claim is stated, is \$500, which prevents industry parties from unfairly and improperly avoiding the proper amount of fees to be assessed when filing a claim under the Code.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b-4 thereunder in that it constitutes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above (SR-NASD-94-75) and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-35170; File No. SR-NASD-94-74]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Member Arbitration Surcharge

December 28, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 8, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under Section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a rule change to the Code of Arbitration Procedure amending Section 45(a) to adjust the surcharge on members applied to all new case filings from a flat rate to a graduated rate based on the amount in dispute. Proposed new language is in

¹ 15 U.S.C. § 78o-3.